THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.16872 OF 1999

DATED: 07.11.2007

Between:

A. Prabhakar Rao

.. Petitioner

And

The Chairman-cum-Managing Director, APSRTC, Musheerabad and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.16872 OF 1999

ORDER:

This writ petition is filed challenging the proceedings No.ST/19(30)/99-RR, dated 14.05.1999, issued by the 3rd respondent – Deputy Chief Traffic Manager-I, Rangareddy Region, A.P. State Road Transport Corporation (for short 'the Corporation'), insofar as denial of backwages and continuity of service to the petitioner.

It appears, the petitioner, who was working as Conductor with the Corporation, was removed from service, vide proceedings, dated 16.04.1999 of the 4th respondent - disciplinary authority, after conducting a detailed enquiry into the charges levelled against him. The sum and substance of the charges levelled against him is that he unauthorizedly absented to duties without sanctioned leave and not reported at Hyderabad-2 depot as directed by the Depot Manager, Picket. Aggrieved by the said proceedings, the petitioner approached the appellate authority- the 3rd respondent, who, after elaborate consideration of the matter, ordered reinstatement of the petitioner into service afresh as Conductor. Thereby, the petitioner was denied of continuity of service and backwages. Hence, this writ petition.

Learned counsel for the petitioner strenuously contended that in

the facts and circumstances of the case, denying backwages and continuity of service for the misconduct of absenteeism is not warranted and the same is shockingly disproportionate to that of the alleged misconduct.

Per contra, learned counsel for the respondents supported the order passed by the appellate authority and stated that the appellate authority itself had taken a lenient view of the matter and ordered reinstatement afresh though the charges framed against the petitioner are grave in nature and, therefore, no interference is called for by this Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

According to the petitioner, he was under depression on the death of his wife, fell sick and underwent treatment in A.P.S.R.T.C. Hospital at Tarnaka from 19.12.1995 to 03.09.1996 and, to that effect, a certificate was also issued by the Civil Surgeon of the said Hospital. While so, unfortunately during the said period, he was transferred to Hyderabad-2 depot, vide orders dated 21.12.1995, and when he could not report to duty, he was issued with a charge sheet on 20.02.1996 alleging unauthorized absenteeism. But, as per the above said certificate issued by A.P.S.R.T.C. Hospital, the petitioner was undergoing treatment in the Hospital as on the date of transfer and, therefore, it is clear that transfer order was not served on him. Thereafter, according to the petitioner, when he reported to duty on 04.09.1996 at Hyderabad-2 depot, he was not permitted to join duty and thereafter he again fell sick and was admitted into Osmania

General Hospital and underwent treatment for a period of not less than a year in the said Hospital. But, absolutely, there was no evidence to that effect and the petitioner again reported to duty only on 11.5.1998. As such, an enquiry was conducted into his unauthorized absence to duties from 04.09.1996 to 10.05.1998 and, ultimately, he was removed from service. However, the appellate authority, after examining the matter in detail and on noticing that the petitioner's past service was free from any adverse remarks and also taking into consideration his age, directed reinstatement as fresh Conductor.

I am in full agreement with the submissions made by the learned counsel for the petitioner that the appellate authority, while setting aside the punishment of removal from service imposed by the disciplinary authority, by taking lenient view, ought not to have denied the benefit of continuity of service. The facts and circumstances would definitely go to show that the petitioner was under a grave shock due to death of his wife and fell sick and underwent treatment for a long period. Under those circumstances, I am of the opinion that, in a case of this nature, denying continuity of service and ordering reinstatement afresh is a great injustice done to the petitioner. Ofcourse, insofar as denial of backwages, I am of the view that the appellate authority has not committed any error by applying the theory of 'no work, no pay'.

For the above reasons, the impugned order, dated 14.05.1999, is modified to be read as under:

> "The petitioner shall be reinstated into service with continuity of service, but without any backwags and attendant benefits."

It is needless to say that the petitioner is entitled for all the

retirement benefits treating the service as continuous and without any break.

The writ petition is allowed to the extent indicated above. No costs.

C.V. RAMULU, J

7th November, 2007.
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